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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &

HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.483/2007

APPELLANT Dilharan Sahu, S/o Pardeshi, aged 25 years, Cultivator and resident of Village Bhatgaon (Bhadipara Chauk), in the Tahsil Bilaigarh, District Raipur (C.G.)

Vs

RESPONDENT The State of Chhattisgarh through the (Police Station Bilaigarh, District Raipur) Collector, District Raipur

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Present:
Mr. J.R. Verma, Advocate for the appellant.
Mr. D.K. Gwalre, Addl. Public Prosecutor for the respondent-State.

ORAL JUDGMENT

(17th July, 2007)

Per L.C. Bhadoo, J:

Today, this appeal is listed for hearing on I.A. No.1/2007 for suspension of sentence and grant of bail during the pendency of this appeal. During the course of arguments, we have perused the record & judgment of the trial court and perusal of the same shows that in this case the accused/appellant has been convicted merely on the basis of surmises & conjectures, there is no legal evidence in order to connect the

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accused/appellant with the crime in question and therefore, we decided to dispose of this appeal itself, to which learned counsel to the respective parties gave their consent.

This appeal is directed against the judgment of conviction and order of sentence dated 3rd May, 2007 passed by learned 2nd Additional Sessions Judge, Baloda Bazar, District Raipur in Sessions Trial No.374/06 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 450, 302 & 201 of the IPC, sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month; R.I. for life and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month & R.I. for 7 years and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month respectively. All the sentences have been directed to run concurrently.

Case of the prosecution, in brief, is that Pardeshi Ram Sahu, father of present accused/appellant & son of deceased Manglin Bai, lodged a report (Ex.P-10) in the Police Outpost Bhatgaon, Police Station Bilaigarh to the effect that on 11.7.2006 at about 10.30 p.m. he along with his wife & children was sitting in the house after taking dinner. His mother Mangalin Bai (since deceased) used to reside with his brother Krishan Kumar in the adjoining house and the gate of that house is on the other side. His

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brother Krishan Kumar is residing in Korba, therefore, his mother used to reside all alone in the house of Krishan Kumar. All of a sudden he saw the smoke coming out from the room of his mother. Dukhatram also saw and raised the cries regarding fire. He along with other villagers went towards that side, the door was closed from inside, therefore, they entered the house after breaking open the door and saw that his mother was burning in the courtyard. He along with villagers extinguished the fire. His mother has set herself on fire after pouring kerosene on her body and died. Receiving this merg intimation, the Investigation Officer left for the scene of occurrence and after giving notice (Ex.P-1) to the Panchas prepared the inquest (Ex.P-2) on the body of Mangalin Bai. Site plan (Ex.P-12) of the place of occurrence was prepared by the Investigating Officer and site plan (Ex.P-17) was prepared by the Halka Patwari. Body of Mangalin Bai was sent for postmortem examination to Primary Health Centre, Bilaigarh under Ex.P-19 where Dr. Narayan Singh (PW-9) conducted the postmortem, prepared the report (Ex.P-18) and opined that the cause of death was injury on the chest, excessive bleeding & shock and the death was homicidal in nature. Based on the postmortem report (Ex.P-18), F.I.R. Ex.P-13 was registered.

During the investigation, the accused while in police custody gave memorandum (Ex.P-3) and stated that he is producing Iron Kada, which was used for attacking Mangalin Bai. Said iron Kada was seized under

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Ex.P-4. Based on the information given by the accused Panchanama Ex.P-6 was prepared. Iron "Kada" was sent to the medical officer, PHC Bilaigarh under Ex.P-22 for his opinion, who gave his report vide Ex.P-19 and opined that it was possible that the injuries found on the body of Mangalin Bai could be caused by said iron "Kada" in question. He further opined that the injuries could be caused otherwise also.

After completion of usual investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class, Baloda Bazar, who in turn committed the case to learned Sessions Judge, Raipur from where learned 2nd Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charges against the accused examined 16 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he pleaded innocence and stated that he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. J.R. Verma, Advocate for the appellant and Mr. D.K. Gwalre, Addl. Public Prosecutor for the respondent/State.

Having heard learned counsel for the parties, we have perused the record and judgment of the trial court.

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In this case virtually there is no legally admissible evidence on record to connect the accused/appellant with the crime in question. PW-4 Pardeshi Ram Sahu, father of the accused and son of the deceased, lodged the report (Ex.P-10) and in the said report he has mentioned that her mother died on account of burn injuries as she set herself on fire after pouring kerosene on the body. Thereafter, the body of Mangalinbai was sent for postmortem examination and during postmortem the doctor (PW-9) noticed that there were injuries on the chest, 5th & 6th ribs of left side were found fractured, after opening the body he reached to the conclusion that the cause of death was fracture of ribs, which penetrated into left lung and damaged the left lung, whole chest was full of water like blood. The burn injuries on the body were after the death and therefore, the case was registered and investigation started.

PW-1 Durpat has not stated anything in his evidence regarding the involvement or motive of the accused to commit the murder of Mangalin Bai. PW-2 Panchdas Panika is the village Kotwar and he has stated that accused gave memorandum and based on that iron Kada in question, which he was wearing at that time, was seized from him. PW-3 Sunaram Sahu is the witness of seizure of one kerosene tin, match box and hairs of Mangalin Bai. Pardeshi Ram Sahu (PW-4) has been declared hostile and he has not stated anything against the accused which connect him with the crime in question. Even in the report (Ex.P-10), which was lodged by him, he

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has mentioned that his mother set herself on fire after pouring kerosene on her body and died on account of burn injuries sustained by her. Even other witnesses have not stated anything which connects the accused with the crime in question.

Based on the evidence of PW-10 Dinbandhu Uikey who has stated that the accused gave memorandum (Ex.P-3) based on that he produced the Kada, which he was wearing at the time of incident. He disclosed that he attacked Mangalin Bai with that Kada, the trial court has connected the accused with the crime in question, but no blood or anything else was found on the kada in question in order to connect the accused with the crime in question. Moreover, the Kada in question was sent to the doctor for his opinion vide Ex.P-19 and he gave his opinion vide Ex.P-20 to the effect that the injuries found on the chest can be caused by Kada in question, the injuries can be caused even otherwise without this Kada. Therefore, based on this recovery of Kada the accused cannot be connected with the crime in question.

Virtually, as has been mentioned earlier, there is no iota of legally admissible evidence in this case to connect the accused with the crime in question and to connect the accused that he entered the house of deceased for committing the offence, that he attacked Magalin Bai & caused her death and that the accused set Mangalin Bai on fire in order to screen himself from the legal punishment for committing murder of

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Mangalin Bai. Therefore, learned Additional Sessions Judge has convicted and sentenced the accused/appellant without any iota of evidence available on record. The Presiding Officer is a very senior officer but it seems that he does not know the basic principle of criminal law and that is why he has convicted and sentenced the accused without any evidence on record.

For the foregoing reasons, the conviction of accused/appellant under Sections 450, 302 & 201 of the IPC and sentences imposed under those sections cannot be sustained.

In the result, the appeal filed by the appellant succeeds and the same is allowed. Conviction of appellant under Sections 450, 302 & 201 of the IPC and sentences imposed under those sections are hereby set aside. He is acquitted of that charges and he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

P.T.O.